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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Amendment to the Commission's Rules
Regarding a Plan for Sharing
the Costs of Microwave Relocation

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WT Docket No. 95-157
RM-8643

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**COMMENTS OF PCS PRIMECO, L.P.
TO NOTICE OF PROPOSED RULE MAKING**

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November 30, 1995

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Summary

PrimeCo generally supports the Commission's proposals to establish a system for sharing the cost of relocating microwave incumbents, and recommends only two changes to the Commission's proposed cost-sharing plan. The first recommendation would substitute a simpler means for determining when the cost-sharing obligation arises. Under the Commission's plan, costly interference studies are required to determine whether one PCS license is obliged to reimburse another for relocating a microwave incumbent. PrimeCo proposes a simpler and less expensive method based upon the location of a commercial base station within a geographic area determined by reference to the relocated microwave link. PrimeCo's also recommends adoption of a cost-sharing mechanism that reduces the amount of documentation a PCS relocater must provide for reimbursement, and that spreads the relocation cost over all affected PCS licensees without regard to the time of their entry into the market.

While PrimeCo also supports the Commission's proposals to clarify certain aspects of the mandatory negotiating period, it continues to believe that the character of the "voluntary" period is so overwhelmingly skewed in favor of the incumbents as to make the entire process unfair to the PCS licensees. Consequently, PrimeCo urges the Commission to reconsider shortening the voluntary negotiation period.

PrimeCo does welcome the Commission's proposals to define more precisely the nature of comparable facilities and also supports its proposals regarding good faith negotiations. Finally, PrimeCo recommends that the twelve-month test period be shortened.

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**COMMENTS OF PCS PRIMECO, L.P.
 TO NOTICE OF PROPOSED RULE MAKING**

PCS PrimeCo, L.P. ("PrimeCo") submits the following comments to the Notice of Proposed Rule Making ("*NPRM*") in the matter captioned above. Overall, PrimeCo supports the Commission's stated goal of moving as quickly as possible to conclude action on several pending microwave relocation issues that are vitally important to the rapid introduction of new services and competition into the wireless industry. PrimeCo urges the Commission to adopt without delay the recommendations of its *NPRM* with the few modifications and suggestions that PrimeCo offers below.

Introduction

The spectrum allocated for use by emerging technologies such as Personal Communications Services ("PCS") is currently used by private and common carrier fixed mi-

crowave services.¹ Before PCS licensees can begin operations, their bands need to be cleared of the fixed microwave users whose systems would suffer interference from PCS operations. To relocate these incumbent users, the FCC adopted a set of rules under which new, emerging technology licensees would become responsible for the incumbent microwave users' relocation expenses.² While these rules were well intended and meant to shield incumbent users from summary actions that could disrupt their operations, experience has made it increasingly clear that the rules are incomplete in at least a couple of regards, and that changes are needed to ensure fairness and the rapid introduction of competitive wireless services.

First, the microwave paths in question are not always neatly located within the geographic assignments and frequency allocations of the PCS licensees. Some paths may be partly in one Major Trading Area (MTA) and partly in another; others cross over from one PCS frequency block to another; and still others may combine features of both problems. As the *NPRM* observes, "[b]ecause of the pattern of use of the 1850-1990 MHz band by microwave incumbents, the relocation burden on each PCS licensee is not necessarily limited to microwave links within its spectrum block and licensing area."³ The rules, as now constructed, do not provide a means by which PCS licensees could share the cost of relocating facilities that are only partly in one carrier's spectrum block or licensing

¹ *In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, RM - 7981, RM - 8004, *First Report and Order and Third Notice of Proposed Rule Making* (October 6, 1992), at ¶ 3 (hereafter *First Spectrum Order*).

² The rules provide for a period of "voluntary" negotiation, during which the parties can negotiate the terms of an incumbent's relocation. An incumbent has no obligation to negotiate during this time. The voluntary period is followed by a mandatory period in which the incumbent, following notice from the emerging technology carrier, must negotiate in "good faith." The new entrant's obligation is to provide "comparable facilities" to the incumbent. See, 47 C.F.R. §§ 21.50; 94.59.

³ *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, RM-8643 *Notice of Proposed Rule Making* (October 13, 1995) at ¶ 15 (hereafter "*NPRM*").

area.⁴ To remedy this problem, several parties have urged the Commission to adopt a plan for distributing the relocation costs arising from these instances among PCS carriers.

A second problem arising from the current rules deals with the general concept of a voluntary relocation period. In establishing its relocation policy, the Commission declared that "[t]he plan ... we are adopting herein is intended to provide licensees of services using emerging technologies with access to 2 GHz frequencies in a reasonable time-frame, and at the same time prevent disruption to existing 2 GHz operations and minimize the economic impact on the existing licensees."⁵

In general, the FCC's relocation rules are highly solicitous of the incumbents well being. The "voluntary" period, in fact, is voluntary for the incumbent users only. For the A/B block PCS licensees, who have paid more than seven billion dollars for their spectrum rights, the need to begin service as rapidly as possible makes these negotiations an absolute business necessity. That fact alone invites abuse; however much the FCC intended the rules to act as a shield protecting the microwave incumbents from expense and inconvenience, circumstances and human nature have made of this shield a powerful sword that a small but significant group of incumbents have brandished as they hector PCS licensees with extortionate, unreasonable demands. This abuse of the rules is frustrating the announced policy of both Congress and the FCC to introduce new services and competition into the wireless industry as rapidly as possible.⁶

⁴ Several parties, however, including PrimeCo, have negotiated a cost sharing agreement among themselves to address this shortcoming in the existing rules.

⁵ *In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9; RM-7981; RM-8004 *Third Report and Order and Memorandum Opinion and Order* (August 13, 1993) at ¶ 1 (hereafter *Third Spectrum Order*).

⁶ *See, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Second Report and Order* (March 7, 1994) at ¶13 *et seq.*

The Commission has proposed several modifications of the relocation rules that will help to curb some, but not all, of the excesses of this process. PrimeCo supports these proposed changes, especially the Commission's proposal to define the term "comparable facilities." The imprecision of this term has made relocation negotiations much more difficult and subject to abuse. Its definition will assist the parties in reconciling their differences and, in PrimeCo's view, serve to expedite the process of relocation.

In these comments, PrimeCo also has several suggestions for further improving the relocation process. These suggestions are described in the sections that follow.

I. Sharing of Microwave Relocation Expenses

Because many PCS licensees will have to clear microwave links that are outside of their own frequency blocks and geographic assignments, later PCS operators in those blocks will enjoy the benefit of these efforts. Such a situation creates the possibility that the later PCS operators could be "free riders," that is, these subsequent operators will find their frequency blocks cleared at no cost to them as a result of another carrier's efforts. This potential windfall to another licensee could lead some carriers to delay their spectrum-clearing efforts or to go about them in a way that is inefficient for the industry as a whole.⁷ The *NPRM*'s cost-sharing plan is intended to address this issue by creating a mechanism that identifies the costs that can be shared and a means for allocating the cost among all affected carriers.

The *NPRM* also proposes to permit parties to enter into their own, private cost-sharing plans. PrimeCo supports this proposal. In fact, as noted, PrimeCo and four other

⁷ *NPRM* at ¶ 16.

PCS licenses have entered into such an arrangement, which is discussed in the following section.

A. The Five-Party Agreement

A number of organizations recognized the free rider problem inherent in the FCC's original band-clearing scheme. The Personal Communications Industry Association ("PCIA") brought the issue to the Commission's attention in 1994 when it proposed the adoption of a plan providing for the sharing of microwave relocation costs among the affected carriers.⁸ In 1995, Pacific Bell outlined a plan that called for PCS licensees in all blocks to share in the cost of relocating the microwave incumbents.⁹ The Commission's proposed rules for cost sharing of microwave relocation expenses grow out of these initiatives. At roughly the same time, PrimeCo and four other PCS licensees¹⁰ began to explore the possibility of a private agreement that would result in the parties sharing microwave relocation expenses among themselves. Shortly before the publication of the *NPRM*, the five parties reached agreement on a cost-sharing plan ("the Five-Party Agreement").¹¹

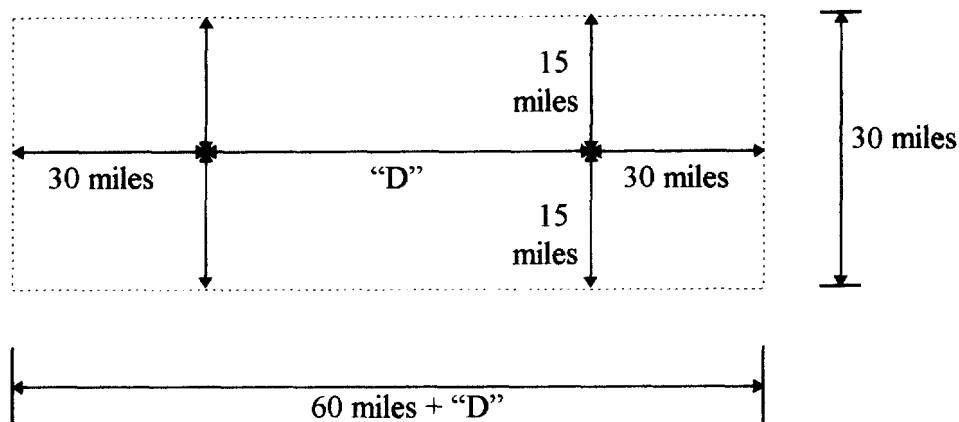
Under the terms of the Five-Party Agreement, cost sharing is triggered whenever all or a part of the relocated microwave link is co-channel with the licensed A or B PCS band of one or more PCS licensees, another party has paid the relocation costs of the incumbent, and a PCS licensee locates a fixed commercial base station within a rectangular area defined by reference to the removed microwave path in the following manner:

⁸ PCIA Petition for Partial Reconsideration, GEN Docket No. 90-314 (filed July 25, 1994).

⁹ *Petition for Rule Making of Pacific Bell Mobile Services*, RM-8643 (filed May 5, 1995).

¹⁰ The others are: AT&T Wireless Services, Inc.; Wireless Co., L.P.; PhillieCo, L.P.; and GTE Macro Communications Service Corporation.

¹¹ The agreement is attached hereto as Attachment 1.



where "D" is the length of the relocated microwave path.

All costs up to \$250,000 directly related to relocating a microwave incumbent's link will be shared equally among the affected carriers (except for the fees of microwave relocation consultants acting on behalf of the PCS licensees). In addition, costs beyond \$250,000 will be shared if the party making such payments provides documentation to show that the costs were reasonably necessary and reflect actual costs of relocation. Premiums paid for expedition or other reasons are not shareable costs; interest and depreciation are not taken into account.¹² Relocation costs incurred for common support facilities (tower upgrades, new towers, and the like) are allocated equally among the links terminating at that node. In addition, the costs of moving any link(s) in an incumbent's network that is not co-channel with the A or B block frequencies will be distributed equally among those links that are co-channel with the A or B block frequencies.

¹² However, if the total payment to the incumbent is \$250,000 or less and includes interest, depreciation, and premiums, the PCS relocater is entitled to reimbursement on all the items pursuant to paragraph 7a of the Five-Party Agreement.

While the Five-Party Agreement and the Commission's proposed plan achieve a rough parity of result, there are some differences in their terms.

B. The Commission's Plan

The *NPRM* proposes a cost-sharing mechanism based upon a formula that calculates the amount of reimbursement by amortizing the relocation costs of a particular microwave link(s) over a ten-year period of time.¹³ The proposed plan would cap reimbursable costs at \$250,000 (plus \$150,000 if a tower is required).¹⁴ The cost-sharing requirement itself would arise if a subsequent licensee's operations are determined to create co-channel interference to the transmit and receive bandwidth of the incumbent microwave licensee.¹⁵ The FCC proposes to determine interference by using the criteria described in TIA Telecommunications Systems Bulletin 10-F, "Interference Criteria for Microwave Systems," May 1994 (the "10-F standard"), or by reference to some other industry-accepted standard.¹⁶

A key feature of the FCC's proposal is the use of an industry-supported clearinghouse to maintain all the cost and payment records related to the relocation of each link. A PCS licensee seeking reimbursement under the proposed formula would submit all the applicable data to the clearinghouse. The clearinghouse, in turn, would then open a file for each relocation and determine the amount of reimbursable costs to be paid by subsequent licensees under the terms of the proposed plan.¹⁷ The clearinghouse would also re-

¹³ *NPRM* at ¶¶ 25-30.

¹⁴ *Id.* at ¶ 43.

¹⁵ *Id.* at ¶ 53. The obligation to reimburse is based on a ten year depreciation period. *Id.* at ¶ 38.

¹⁶ *Id.* at 52.

¹⁷ *Id.* at ¶ 63.

solve disputes arising from the cost-sharing plan.¹⁸ PrimeCo supports the limited use of a clearinghouse as a means of coordinating relocations done pursuant to private agreements (like the Five-Party Agreement) and those done pursuant to the rules adopted by the Commission. Moreover, as described below, PrimeCo believes that many of the clearinghouse's functions - and thus much of its expense - can be reduced if the Commission adopts some of the features of the Five-Party Agreement.

The *NPRM* also requests comment on a proposal to permit a PCS relocater to receive 100% reimbursement for relocating links that are either fully outside of its market area, or fully outside of its licensed frequency band.¹⁹ By contrast, the Five-Party Agreement provides for partial reimbursement only for the relocation of these links. The five parties took this approach to ensure that the PCS relocater has the incentive to negotiate for the best terms it can attain.²⁰ PrimeCo regards partial reimbursement in this setting as a prudent measure for controlling cost since the relocating party may not be as highly motivated to bargain for better terms here as it would be in cases where the links are located within its own band.

C. PrimeCo's Recommendations Regarding the Commission's Cost-Sharing Proposal

While PrimeCo is a party to a private cost-sharing agreement, it expects that there will be circumstances in which it will want to seek reimbursement from PCS carriers who are not part of the Five-Party Agreement. In those cases, PrimeCo expects to rely upon

¹⁸ *Id.* at ¶ 66.

¹⁹ *Id.* at ¶ 33.

²⁰ The Five-Party Agreement also provides that the cost of moving these links, which it calls "Stranger Links," is spread evenly among the relocated links.

the plan developed by the Commission, and consequently has an interest in ensuring that the plan is as efficiently designed as possible. In this vein, PrimeCo respectfully submits the following suggestions to improve the plan outlined in the *NPRM*.

Overall, PrimeCo regards the plan proposed in the *NPRM* as a good one and has only limited comments upon it. Specifically, PrimeCo urges the Commission to consider two aspects of the Five-Party Agreement as modifications of the *NPRM*'s proposed cost-sharing plan. The first is the "proximity threshold" used to determine interference and the second is the simplified cost-sharing formula of the Five-Party Agreement.

Proximity Threshold

Under the plan proposed in the *NPRM*, an interference study is required to determine if the subsequent PCS licensee has an obligation to reimburse the PCS relocater.²¹ Although the *NPRM* recommends use of the 10-F standard, it is not required. This, of course, presents the possibility of dispute since different interference standards can yield different conclusions, with the end result that the existence of the reimbursement obligation itself is disputed. More fundamentally, however, any reimbursement study must introduce additional expense and delay into the cost-sharing plan.

For these reasons, the parties to the Five-Party Agreement sought to create a simple mechanism for determining interference. That mechanism is the proximity threshold rectangle described above on page five. For PrimeCo, there are several advantages in the use of this method. First, the proximity threshold is not a technology-specific method for

²¹ *Id.* at ¶¶ 51, 55. Note too that the proposed plan also requires that "at least one endpoint of the former link was located within the subsequent PCS licensee's authorized market area" for the reimbursement obligation to arise. In addition, the proposed plan will probably require each licensee (Blocks A or B plus C through F) to run interference studies.

determining interference. Consequently, its use forestalls disputes about the proper standards to be employed in measuring, for example, the interference created by a TDMA-based system as opposed to a CDMA-based one. Second, reliance on the proximity threshold will result in fewer disputes than will be the case if reliance is placed upon the 10-F standard. For, while the 10-F standard itself may be well specified, its proper employment in a particular study is potentially subject to dispute. Finally, the proximity threshold is more predictable than an interference study. With the proximity threshold, all subsequent licensees will know that locating a base station inside the rectangle and commencing commercial service will trigger an obligation to reimburse the PCS relocater if all or a part of the relocated microwave link(s) is co-channel with the PCS licensee's base station.

The Cost-Sharing Mechanism

The second advantage of the Five-Party Agreement is its simpler cost-sharing approach. Under the FCC's proposed plan, the clearinghouse collects from the relocating PCS licensee "necessary information regarding when and where microwave facilities have been relocated, [and] actual relocation costs incurred by the PCS licensees." In addition, the clearinghouse would settle payments between licensees and participate in the resolution of disputes.

Many of these activities can be reduced or eliminated. For example, if the payment to the incumbent is \$250,000 or less, then, under the Five-Party Agreement, the PCS relocater is not required to produce documentation supporting the payment; only proof that payment was made to the incumbent is needed for reimbursement in this instance. Fur-

thermore, the cost-sharing formula of the Five-Party Agreement makes the task of calculating the subsequent licensee's reimbursement obligation easier because it simply divides the reimbursable costs evenly among the affected carriers. The *NPRM*'s proposed formula, on the other hand, relies upon a calculation that amortizes the reimbursement based upon the time that the subsequent carrier enters the market. Thus, latecomers pay less, but they do not, as a result of their late entry, lose any of the benefit of the relocation cost actually expended. PrimeCo regards this as a mismatch between the benefit received by the latecomer and the price it is asked to pay under the *NPRM*.

Use of the Five-Party Agreement's formula also makes it far easier to calculate the reimbursement fee of the C, D, E, and F band licensees since there is no need to conduct complicated and expensive interference studies. As noted earlier, application of the proximity threshold is not dependent upon the type of technology that a licensee intends to employ. Consequently, interference disputes arising from technology choices are entirely eliminated.

D. Private Agreements Outside the FCC's Plan

The plan proposed in the *NPRM* permits PCS licensees "to negotiate alternative cost-sharing terms ..."²² PrimeCo supports this feature of the Commission's proposed plan and urges the FCC to make explicit in its rules that a private cost-sharing agreement takes precedence over whatever plan the Commission may eventually adopt.

PCIA has proposed that

[A]ny party signing a separate agreement be required to notify the clearinghouse that an agreement has been signed between certain parties and

²² *NPRM* at ¶ 29.

which links are affected. If a PCS provider party to a separate agreement wants cost sharing reimbursement from other PCS providers not subject to the agreement, it can register its location with the clearinghouse and provide any relevant parties with the relocation cost data. However, all PCS providers, whether or not subject to a private agreement, should be responsible for making all cost sharing payments to relocating PCS providers required by the FCC plan unless those payments are superseded by a private agreement.²³

PrimeCo supports this proposal.

II. Relocation Guidelines

The microwave relocation rules are unfair to PCS licensees. During the voluntary negotiation period, absolutely nothing in the rules restrains an incumbent from extracting the most outrageous terms from a PCS licensee.²⁴ By contrast, everything in the PCS licensee's circumstances conspires to force it to early capitulation in negotiations with incumbents. That every incumbent has not chosen to exploit the absolute advantage conferred upon it by the rules testifies not to the efficacy of the rules, but to the forbearance of the microwave operator in question.

Those microwave operators who have accepted the rules' invitation to gouge continue to pose a threat to the development and deployment of PCS and to the government's new policy of auctioning spectrum. In virtually any given market, an incumbent who decides to do so can either block development of the spectrum by the emerging technologies licensee or force an unreasonable settlement that will make the service less economically attractive to the public. Two important consequences follow from this. First, the additional competition that both Congress and the FCC have sought to promote in the wireless

²³ Comments of Personal Communications Industry Association.

industry will be weakened or stillborn. Second, the future spectrum auction revenues that Congress is counting upon to help balance the budget will not be realized in the amounts projected because later bidders will need to account for these significant relocation costs in valuing PCS markets.

To PrimeCo's knowledge, no PCS licensee seeks to move an incumbent without bearing the costs of relocation to a comparable system. Indeed, during the pleading cycle leading to the development of the current rules, many potential PCS licensees expressed their willingness to make the incumbents whole but, at the same time, objected to the utterly one-sided nature of the relocation rules proposed. In response, the incumbents and their trade associations replied that they could be trusted to behave reasonably given that they sought nothing more than to ensure the continuity of service in their operations.²⁵ Events have now shown that, for a significant minority of the incumbents, there was another agenda entirely.²⁶

The *NPRM* tries to redress the imbalance in negotiating power that the relocation rules created. PrimeCo endorses these attempts to restore balance to the process; however, it must also point out that so long as the voluntary negotiation period remains unchanged, the essential nature of the current situation is not improved. PrimeCo therefore urges the Commission to reconsider the two-year "voluntary" negotiation period,²⁷ and to adopt the *NPRM*'s proposed modifications to the rules governing the mandatory negotiation period. In doing so, the Commission will provide the basis for expediting relocation

²⁴ Both CTIA and PCIA have provided the Commission with examples of the unreasonable demands some incumbents are making.

²⁵ See, e.g., *Third Spectrum Order* at ¶ 10.

²⁶ Attachment 2 contains examples of a number of abuses compiled by CTIA.

of the microwave incumbents while preventing abusive relocation demands from delaying the introduction of PCS services, raising the price of PCS service, and depressing future spectrum auction revenues.

A. Good Faith Negotiations

The rules for compensating incumbents should contain incentives to reward good behavior and punish abuse. The Commission has tentatively concluded that, “for purposes of the mandatory period, an offer by a PCS licensee to replace a microwave incumbent’s system with comparable facilities constitutes a ‘good faith’ offer.”²⁸ Furthermore, the FCC also proposes that failure to accept such an offer creates a rebuttable presumption of bad faith on the part of the incumbent.²⁹ For those incumbents who refuse an offer of comparable facilities and who subsequently lose either in arbitration or before the FCC, the penalty for their intransigence should be a change in their license to secondary status ninety days after the unfavorable decision.

B. Comparable Facilities

PCS licensees are obliged, under the relocation rules, to offer the incumbent microwave user “comparable facilities.” While the Commission has indicated the kinds of considerations it would weigh in determining whether or not one system was comparable to another, there has remained a great deal of uncertainty surrounding this term. This uncertainty has introduced some delay into negotiations between the parties as they sought

²⁷ As noted, these negotiations are voluntary for the incumbents only; for the PCS licensee they are vital to its success in the marketplace.

²⁸ *NPRM* at ¶ 69.

²⁹ *Ibid.*

to reconcile their different views of comparability and, as noted above, leads to potential abuse of the relocation process.

In PrimeCo's view, comparability should be based upon technical factors. PCIA has recommended that, if the proposed relocated facilities meet or exceed the incumbent's existing facilities, then a rebuttable presumption should arise that the facilities in question are comparable for purposes of the FCC's rules. PrimeCo agrees with this approach and believes it to be consistent with the Commission's comparability touchstones: communications throughput, system reliability, and operating cost.³⁰

In addition to these technical factors, the Commission should make it clear that certain other factors are excluded from the concept of comparable facilities. For example, comparable facilities should not encompass the replacement of analog facilities with digital equipment when an acceptable analog solution exists. If an incumbent desires to upgrade to a digital system, it should be required to bear the expense of that upgrade itself. Furthermore, the FCC should, as it has tentatively concluded, limit an incumbent's right to comparable facilities to actual relocation costs. Fees for consultants and attorneys hired by the incumbent without the advance approval of the PCS locator should not be reimbursable during the mandatory period. PrimeCo also endorses the FCC's clarification that the PCS relocater's responsibility for comparable facilities extends only to the links actually suffering interference, and not to the incumbent's entire system.³¹

The *NPRM* also proposes that parties who are unable to conclude their negotiations after one year should be required to file two independent cost estimates of a compa-

³⁰ *Id.* at ¶¶ 72, 73.

³¹ *Id.* at ¶ 76.

able system with the FCC.³² PrimeCo supports this proposal and recommends that the cost estimates be disaggregated by link. Use of the cost estimates will give the parties to the stalled talks a basis for reaching agreement and, perhaps, avoid resort to some form of dispute resolution.

C. Additional Microwave Licensing in PCS Spectrum

The Commission has proposed that, except for minor modifications that do not add to the cost of relocation, it will no longer license microwave stations in the PCS band.³³ The *NPRM* proposes that any other modifications be allowed on a secondary basis only. PrimeCo supports the limitation on new microwave licensing and urges the Commission to extend it to include secondary operations as well. These operations will, sooner or later, suffer or cause interference. Consequently, their relocation to other facilities is inevitable and should be undertaken at the earliest opportunity.

D. The Twelve-Month Test Period

The FCC can improve the twelve-month test period in several regards. First, the test period for ensuring that the new facilities are comparable should be shortened to one month. Were an incumbent microwave operator to upgrade its system independently of this relocation process, its test period for purposes of system acceptance would typically be less than one month; for the equipment manufacturer would have designed the replacement system with sufficient fade margins to account for seasonal variations. The twelve-month test period assumes that the replacement system here will not be adequately

³² *Id.* at ¶ 78.

³³ *Id.* at ¶ 86.

engineered. This assumption is not supported by industry practice or commercial experience. Second, the FCC should make it clear that the parties can waive the test period by agreement. In all cases, however, the rules should provide that any incumbent who accepts a cash payment from the PCS relocater or who designs its own replacement facilities will not be permitted to return to its previous system even if the new system subsequently proves flawed. This is a fair result since anything else would make deployment of the PCS licensee's system subject to the incumbent's own relocation efforts, a circumstance over which the PCS licensee has no control.

Whatever the length of the test period, the incumbent should return its license to the FCC upon cutover of the new system, as PCIA suggests. The Commission would then hold the license until the end of the test period and issue a public announcement at its conclusion. This process will make certain the date on which the test period ends.

PCIA also proposes that PCS providers should not be required to hold the spectrum from a relocated path in reserve. Requiring the PCS carrier to hold the spectrum in reserve adds to the delay in the relocation process. As PCIA suggests, the FCC should clarify that if the alternative facilities to which a microwave licensee is relocated turns out not to be comparable, the licensee need not be restored to its original 2 GHz spectrum, but to comparable facilities provided by some other means. PrimeCo supports this proposal.

Conclusion

For the foregoing reasons, PCS PrimeCo, L.P. respectfully urges the Commission to adopt the the proximity threshold and simplified cost-sharing mechanism described herein. In addition, PrimeCo supports the Commission's adoption of its proposed definition of good faith negotiations and recommends that it also adopt PrimeCo's recommendation regarding incumbents who are found to have refused an offer of comparable facilities. PrimeCo also supports the Commission's proposals to define comparable facilities and urges their adoption as well. Finally, PrimeCo submits that the twelve-month test period for comparable facilities is too long and is unnecessary in light of prevailing industry practice. PrimeCo recommends adoption of a one-month test period; in cases where the incumbent either accepts a cash payment from the PCS relocater or designs its own replacement facilities, no return to the previous system should be permitted.

Respectfully submitted,



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November 30, 1995

Attachment 1

AGREEMENT

This Agreement ("Agreement") is made on and as of September 28, 1995 by and among AT&T Wireless Services, Inc., a Delaware corporation ("AT&T Wireless"), Wireless Co., L.P., a Delaware limited partnership ("Wireless Co"), PhillieCo, a Delaware limited partnership ("PhillieCo"), PCS PrimeCo, L.P., a Delaware limited partnership ("PrimeCo"), and GTE Macro Communications Service Corporation, a Delaware corporation ("GTE") (hereinafter referred to as "Party" or "Parties").

RECITALS

WHEREAS, the Parties hold PCS licenses to provide telecommunications services in certain MTAs; and

WHEREAS, the operation of the PCS systems will require the relocation of Incumbent microwave service providers who currently operate in such MTAs; and

WHEREAS, the FCC requires that the Incumbent microwave service providers be reimbursed for their relocation costs; and

WHEREAS, the FCC has not established procedures for the allocation of such costs among the PCS license holders who benefit from the relocation of Incumbent microwave service providers; and

WHEREAS, the Parties wish to establish procedures to provide for the sharing of such relocation costs in those markets where they are benefitted, all subject to whatever rules or regulations may later be adopted by the FCC or other regulatory bodies;

NOW, THEREFORE, in consideration of the mutual commitments made herein, the Parties hereby agree as follows:

DEFINITIONS

"Co-channel" shall mean any situation where a part of a licensed PCS block (2 * 15 or 2 * 5 MHz) overlaps any part of the decommissioned link's previously licensed operating band (2 * 10 MHz or 2 * 5 MHz).

"FBS" shall mean a Fixed Base Station which is a stationary transmission node used for the broadcast to and reception of communications with stationary (fixed) mobile or non-stationary mobile radio users.

"FCC" shall mean the Federal Communications Commission, or any successor entity.

"Incumbent" shall mean the owner of a license to provide microwave service through a Microwave Link or a Microwave Network.

"Microwave Link" shall mean a point-to-point radio path established for the transmission and reception of microwave-based communication signals, here limited to 800 MHz to 40,000 MHz terrestrial point-to-point line of communications. Each Microwave Link is comprised of two end nodes, each node containing equipment used to accomplish the successful transmission and/or reception of microwave radio emissions towards and/or from the other node.

"Microwave Network" shall mean a set of contiguous nodes and Microwave Links (without fiber links) that interconnect pairs of nodes. A Microwave Network may consist of as few as two nodes and a single link, or may consist of multiple, interconnected links and nodes.

"MTA" shall mean a Major Trading Area which is a geographic boundary based upon the flow of commerce as defined by Rand-McNally as of January 1, 1995.

"PCS" shall mean Personal Communications Service, a wireless and other ancillary 2-way communications service licensed by the FCC and provisioned in the 1850 MHz - 1990 MHz band.

"Stranger Link" shall mean a Microwave Link operating wholly outside of the licensed A and/or B PCS bands of the Parties hereto, operating within the 1850 MHz - 1990 MHz band.

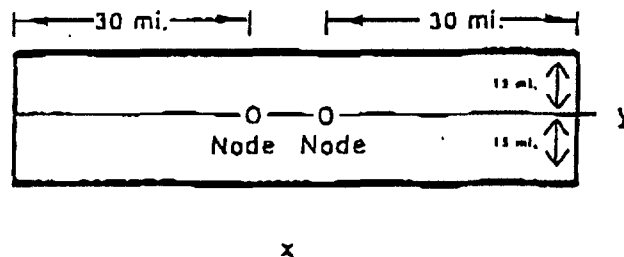
TERMS OF AGREEMENT

1. Cost Sharing Situations. Subject to the limitations set forth below, each Party agrees to share the payments necessary to relocate the Microwave Link of an Incumbent if:

- a. All or part of the Microwave Link is co-channel with the licensed A and/or B PCS band(s) of that Party and one or more other Parties;
- b. Another Party has paid the relocation costs of the Incumbent; and
- c. That Party turns on an FBS at commercial power and the FBS is located within a rectangle described as follows:

The length of the rectangle shall be x where x is a line extending through both nodes of the Microwave Link to a distance of 30 miles beyond each node.

The width of the rectangle shall be y where y is a line perpendicular to x and extending for a distance of 15 miles on both sides of x .



If the requirements of a, b, and c above have been met for one Microwave Link in a Microwave Network, a Party will incur cost sharing obligations pursuant to this Agreement for the entire Microwave Network (being moved as part of a single agreement), except that no obligation will exist for any Microwave Link where both nodes of that Microwave Link lie more than 50 miles beyond the boundaries of the MTA where the requirements of a, b and c were met.

2. Negotiations With Incumbent. Negotiations with an Incumbent may be conducted by any or all Parties (or their agents) who hold PCS licenses affected as described in Section 1.a. or 1.b. above. This Agreement does not cover joint simultaneous negotiations between an Incumbent and more than one Party, which negotiations shall not be requested by a Party, and shall not be held by any of the Parties unless requested by an Incumbent.

Unless requested by an Incumbent to do so, no Party shall inform any other Party that it is engaged in negotiations regarding relocation with an Incumbent, until after a binding written agreement providing for relocation is executed by the Party and the Incumbent.

3. Anti Fraud. In order to be eligible for cost sharing pursuant to this Agreement, costs must have been incurred in performance of a written agreement with an Incumbent, which agreement shall contain representations and warranties that the Incumbent has not already recovered costs for relocation of the Microwave Links in question, shall in the future not seek recovery of such duplicative costs, and will inform PCS license holders seeking relocation of such Microwave Links that relocation has already been arranged.